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FOLEY AND LARDNER LLP			EXAMINER	
SUITE 500			DUNHAM, JASON B	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/083,471

**Applicant(s)**

SAITO, MAKIKO

**Examiner**

JASON B. DUNHAM

**Art Unit**

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyden (US 2002/0143646) in view of Abhyanker (US 2002/0116305).**

Referring to claim 1. Boyden discloses an auction system, comprising:

- a plurality of user terminals (Boyden: abstract and figure 1); and
- a server connected to said-user terminals through a network, said server being configured as an auction site for receiving bids from said user terminals and determining a successful bidder for an auction commodity based on the received bids (Boyden: paragraphs 4 and 7);
- said server being configured to exhibit a delivery charge bearing object commodity which is to be sold by a dealer and with which part or all of a delivery charge for the auction commodity for which a user is determined as a successful bidder is to be borne so that the delivery charge bearing object commodity may be sold in combination with the auction commodity in response to a request from one of said user terminals (Boyden: paragraph 50);
- Boyden discloses all of the above but does not expressly calculating a portion of the delivery charge to be borne by a distributor. Abhyanker discloses an auction

system comprising a server configured to calculate, with respect to a charge to be paid to a distributor entrusted with the delivery of the delivery charge bearing object commodity and a charge to be paid to a distributor entrusted with the delivery of the auction commodity, the amount of the delivery charge to be borne in accordance with prices of the delivery charge bearing object commodity and the auction commodity, and configured to perform a sales process based on the calculated amount of the delivery charge to be borne (Abhyanker: abstract and paragraphs 14 and 41). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have modified the system of Boyden to have included calculation of a distributor's (seller) delivery costs, as taught by Abhyanker, in order to for the seller to receive lower shipping costs (Abhyanker: paragraph 40).

- wherein the amount of the delivery charge borne by the dealer is dependent upon the auction commodity which is to be sold (Boyden: paragraph 29). Paragraph 29 of Boyden discloses providing a transportation fee, which is dependent upon the buyer's location, as part of the vehicle description. The sold auction commodity (i.e. a purchased car promised to a buyer at a specific location) is then borne by the dealer.

Referring to claim 2. The combination of Boyden and Abhyanker further discloses an auction system comprising:

- a plurality of personal seller terminals and a plurality of participant terminals (Boyden: figure 1); and

- an auction server connected to said personal seller terminals and said participant terminals through a network (Boyden: paragraphs 4 and 7);
- said auction server being configured to: (a) receive and store auction commodity information from said personal seller terminals, (b) transmit the auction commodity information to any of said participant terminals in response to a request from the participant terminal, (c) receive bidding information from said participant terminals based on the auction commodity information and determine a successful bidder based on the bidding information (Boyden: figure 11);
- receive, from a dealer terminal associated with a predetermined dealer and connected to said auction server through said network, and store dealer provision information and delivery charge information (Abhyanker: abstract and paragraphs 14 and 41 disclosing a seller receiving lower shipping costs).
- (b) transmitting includes placing and transmitting the dealer provision information into and together with the information to be transmitted to the participant terminal (Boyden: abstract, figure 1, and paragraphs 7 and 26);
- (c) receiving bidding information includes receiving purchase desired commodity information corresponding to the dealer provision information transmitted from said participant terminals together with the bidding information (Boyden: abstract and paragraphs 7 and 26); and wherein
- said dealer commodity information including information regarding a commodity to be sold by said dealer (Boyden: abstract);

- said delivery charge information including information regarding the charge for delivery to be borne by said dealer in place of the person who purchases the dealer commodity (Abhyanker: abstract and paragraphs 14 and 41);
- said auction server configured to calculate, with respect to a charge to be paid to a distributor entrusted with the delivery of the delivery charge bearing object commodity and a charge to be paid to a distributor entrusted with the delivery of the auction commodity, the amount of the delivery charge to be borne in accordance with prices of the delivery charge bearing object commodity and the auction commodity, and configured to perform a sales process based on the calculated amount of the delivery charge to be borne (Abhyanker: abstract and paragraphs 14 and 41); and
- the amount of the delivery charge borne by the dealer is dependent upon the auction commodity which is to be sold (Boyden: paragraph 29).

Referring to claim 3. The combination of Boyden and Abhyanker further discloses an auction system wherein said auction server is further configured to (f) classify the auction commodity information from said personal seller terminals based on the auction commodity information and classifying the dealer provision information including the dealer commodity information from said dealer terminal based on the dealer commodity information, and (g) link the auction commodity information and the dealer provision information based on classifications of said auction commodity wherein (b) transmitting includes transmitting the auction commodity information and the dealer

provision information linked to each other the participant terminal (Boyden: figure 2H and paragraphs 33 and 40).

Referring to claim 4. The combination of Boyden and Abhyanker further discloses an auction system wherein the auction commodity information regarding each auction commodity includes information for specifying a classification of the auction commodity, and the dealer commodity information regarding the dealer commodity included in the dealer provision information includes information for specifying a classification of the dealer commodity (Boyden: figure 2H and paragraph 40).

Referring to claim 5. The combination of Boyden and Abhyanker further discloses an auction system wherein said auction server is further configured to (h) receive and store distribution information of a plurality of predetermined distributors from distributor terminals associated with said distributors and connected to said auction server through said network, (i) transmits, when auction commodity information is received from any of said personal seller terminals, the delivery information to the personal seller terminal and receives first distributor designation information (j) transmits, when auction commodity information is received from said dealer terminal, the delivery information to the personal seller terminal and receives second distributor designation information, wherein (f) classifying includes classifying the auction commodity information and the dealer provision information based on the first distributor designation information and the second distributor designation information, (k) designate one of said distributors which is entrusted with delivery of the auction commodity by the personal seller and (l) designate one of said distributors which is

entrusted with delivery of the dealer commodity by the dealer (Boyden: paragraphs 29 and 69);

Referring to claims 6-7. Claim 6-7 are rejected under the same rationale set forth above in the rejection of claims 1-5.

Referring to claim 8. The combination of Boyden and Abhyanker further discloses an auction system wherein the commodity selection information is information for selection of one commodity (Boyden: figure 3f).

Referring to claims 9-16. Claim 9-16 are rejected under the same rationale set forth above in the rejection of claims 1-5.

Referring to claim 17. The combination of Boyden and Abhyanker further discloses an auction system, comprising:

- A plurality of personal seller terminals and a plurality of participant terminals (dealer and distributor) (Boyden: abstract and figure 1); and
- An auction server connected to said personal seller terminals and said participant terminals through a network (Boyden: figure 1);
- Said auction server being configured to: (a) receive and store auction commodity information from said personal seller terminals, (b) transmit the auction commodity information to any of said participant terminals in response to a request from the participant terminal, (c) receive bidding information from said participant terminals based on the auction commodity information and determine a successful bidder based on the bidding information; (d) receive, from the dealer terminal associated with a predetermined dealer and connected to said auction



server through said network, and store dealer provision information and delivery charge information; (e) receive and store distribution information of a predetermined distributor from the distributor terminal associated with said distributor; (f) calculate the delivery charge to be borne in accordance with the prices of the auction commodity and the dealer commodity or commodities; and (g) performing a sales process based on the calculated amounts (Boyden: abstract, figure 1 (network), figure 3a (commodity information to participants), figure 3i and 3j (bid and delivery charge information), figure 11). Where:

- (b) transmitting includes placing and transmitting the dealer provision information into and together with the information to be transmitted to the participant terminal (Boyden: figure 4);
- (c) receiving bidding information includes receiving purchase desired commodity information corresponding to the dealer provision information transmitted from said participant terminals together with the bidding information (Boyden: figure 3i);
- (f) calculating the delivery charge includes taking into account a charge to be paid to the distributor terminal, said dealer commodity information including information regarding a commodity to be sold by said dealer (Boyden: figure 3i, processing fee); and
- said delivery charge information including information regarding the charge for delivery to be borne by said dealer in place of the person who purchases the dealer commodity (Abhyanker: abstract and paragraphs 14 and 41).

***Response to Arguments***

Applicant's arguments filed September 8, 2008 have been fully considered but they are not persuasive. Applicant argues that Abhyanker does not disclose performing a sales process while taking into account a calculated delivery charge because Abhyanker teaches that bids are solicited for a shipping charge for which a buyer and seller have already entered into a contract. The examiner disagrees. Claim 1 discloses determining a successful bidder for an auction commodity and then determining a delivery charge commodity that is "sold in combination" (i.e. price included in the cost of the auction commodity). The combination of Boyden and Abhyanker discloses a buyer and seller agreeing to a contract for goods and then determining a distributor to carry out the delivery (see at least figure 3 of Abhyanker) as part of a sales process. Furthermore, the examiner submits there is no distinction between the "delivery charge bearing commodity" recited in claim 1 and an agreed upon amount that a distributor will ship an auction commodity as taught in the combination of Boyden and Abhyanker.

Independent claims (1, 2, 7, 10, 13, and 15-17) as well as their dependent claims are rejected under the same rationale.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON B. DUNHAM whose telephone number is (571)272-8109. The examiner can normally be reached on M-F, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey A. Smith/  
Supervisory Patent Examiner, Art  
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JBD  
12/8/08